

MEMORANDUM

**TO: Foundational Provision
Subcommittee Members**

FROM: JimTomkovicz, Chair

**RE: Final Proposals re:
Actus Reus and Mens Rea**

DATE: October 25, 2008

The following is a summary of the *final* proposals of the Foundational Provision Subcommittee regarding Actus Reus and Mens Rea.

ACT REQUIREMENT

- (1) A person is not guilty of an offense unless his or her liability is based on conduct that includes a voluntary act or an omission to perform an act of which he or she is physically capable.**
- (2) A voluntary act is a conscious or habitual bodily movement that is the product of the effort or the determination of the person.**
- (3) Liability for the commission of an offense may not be based on an omission unaccompanied by an act unless (a) the omission is expressly made sufficient by the law defining the offense; or (b) the person has a legal duty to perform the omitted act.**
- (4) Possession is an act, within the meaning of this section, if the possessor knowingly procured or received the thing possessed or was aware of his or her control thereof for a sufficient period to have been able to terminate his or her possession.**

CULPABILITY REQUIREMENT

- (1) Minimum Requirements of Culpability: Except when the legislature has enacted an offense that does not require proof of culpability for a material element, a person is not guilty of an offense unless he or she acted purposely, knowingly, recklessly, or negligently, as the law may require, with respect to each material element of the offense.”**
- (2) Kinds of Culpability Defined:**

(a) Purposely: A person acts purposely with respect to the nature of his or her conduct or a result of his or her conduct when it is his or her conscious object to engage in conduct of that nature or to cause such a result and a person acts purposely with respect to an attendant circumstance when he or she is aware of the existence of that circumstance, unless he or she believes or hopes that it does not exist. A conditional purpose does satisfy the requirement of acting purposely unless the condition negates the culpability ordinarily demonstrated by acting purposely.

(b) Knowingly: A person acts knowingly with respect to the nature of his or her conduct if he or she is aware of an attendant circumstance if he or she is aware or aware of a high probability that his or her conduct is of that nature or that the circumstance exists and a person acts knowingly with regard to a result of his or her conduct when he or she is aware that it is practically certain that his or her conduct will cause such result.

(c) Recklessly: A person acts recklessly with respect to a material element of an offense when he or she consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him or her, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation."

(4) Negligently: A person acts negligently with respect to a material element of an offense when he or she should be aware of a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him or her, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(3) Culpability Required Unless Otherwise Required: When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto.

(4) Higher Levels of Culpability Than Required: A person who acts with a higher level of culpability than required for any material element of an offense satisfies the culpability requirement for that element.

(5) Culpability as to Illegality of Conduct: Unless otherwise provided, it is not necessary to prove that a person acted with any culpability as to whether his or her conduct constitutes an offense or as to the existence of an offense, meaning of an offense, or application of an offense to his or her conduct.